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ABSTRACT

This "fastback" examines the U.S. Supreme Court decisions and a few lower court decisions concerning religion and education rendered in the 1980s, and for background purposes, it also includes some decisions prior to the 1980s. The first of four parts discusses cases pertaining to prayer and religious activities in school. Included in the discussion are cases concerning "moment of silence," posting the Ten Commandments, school clubs and the Equal Access Act, religious holidays and holiday observances, Christmas pageants and other seasonal observances, and prayers during school functions. The second part discusses cases involving aid to parochial schools. Litigation involving shared time programs and Chapter I services is discussed, along with tax deductions for education expenses. The third part addresses religion in the curriculum, reviewing cases on religious objections to compulsory school attendance, "creationism" and evolution, using the Bible in the school curriculum, teachers' rights to refuse to teach objectionable material, and textbooks and "secular humanism." A list of cases is appended. (TE)

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FASTBACK

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Religion and the Schools: Significant Court Decisions in the 1980s

EA 020 160

Eugene T. Connors

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Religion and the Schools: Significant Court Decisions in the 1980s

by
Eugene T. Connors

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The chapter sponsors this fastback in memory of Earl Kearney Dryden. Dryden served at the Illinois State Training School for Boys and on the Illinois Parole and Pardon Board. He was initiated into the Northern Illinois University Chapter on 5 January 1961, was the recipient of several chapter awards, and was chapter president in 1969-70. Dryden, a gentle man who personified compassion, died on 24 December 1986.

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Introduction

Over the past three decades, the U.S. Supreme Court has ruled in a series of decisions that public schools must be devoid of all religious content and practices. The Supreme Court's decisions on religion and public education are based on the First Amendment to the U.S. Constitution. This amendment reads, in part:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . .

While the First Amendment was originally intended to apply only to the federal government (thus the phrase, "Congress shall make no law"), the Fourteenth Amendment made the Constitution and its amendments applicable to all levels of government, including the states and their public school systems.

The two clauses of the First Amendment that concern religion are known as the "establishment clause" and the "free exercise clause." In essence, the establishment clause says that the state and its schools cannot advance religion in any way. The free exercise clause says, conversely, that the state and its schools cannot hurt religion in any way. While these two clauses may seem relatively straightforward, their interpretation becomes extremely complex, and they are the center of continuing litigation.

This fastback examines the U.S. Supreme Court decisions and a few lower court decisions concerning religion and education rendered

in the 1980s; and for background purposes, it also includes some decisions rendered prior to the 1980s. It is divided into four parts: prayer and religious activities in school, aid to parochial schools, curriculum issues, and conclusions. For a more detailed discussion of cases decided before 1980, most school law texts provide an adequate discussion; fastback 123 *Church-State Issues in Education* by David Tavel is an excellent short course on the topic.

Before examining the various cases, the reader should be aware of the "Lemon" test developed by the Supeme Court in *Lemon* v. *Kurtzman* (1971), sometimes referred to as the "tripartite" test. The Supreme Court frequently uses this test in deciding religion and education cases. The test had its beginnings in the New York textbook case, *Board of Education* v. *Allen* (1968), where the Court developed the first two parts of the test. Three years later in *Lemon* (1971), the Court added the third part of the test. The three parts of the test are:

1) Does the legislation or practice in question *intend* to advance or inhibit (help or hurt) religion?
2) Even if there is no intent, does the legislation or practice, *in effect*, advance or inhibit religion?
3) Does the legislation or practice in question foster excessive governmental entanglement with religion?

If the response is "yes" to any of the three questions, the Supreme Court usually will rule the legislation or practice to be unconstitutional.

While the first and second parts of the tests are relatively straightforward, the third test is more complicated. Exactly what constitutes "excessive governmental entanglement with religion"? The answer to this question becomes a matter of interpretation in each case. It is also interesting to note that the Supreme Court has avoided using the *Lemon* test in several religion and education cases (for example, the 1976 case, *Smith* v. *Smith*, concerning release time from school). Apparently, the Supreme Court will avoid using the *Lemon* test when it finds the test restrictive or inappropriate.

Prayer and Religious Activities

Any discussion of legal issues on religion and education in the 1980s should begin with mention of two Supreme Court cases from the 1960s. In 1962 the high court ruled in *Engel* v. *Vitale* that a prayer written by the New York Board of Regents for every public school child in the state to say every morning in school was an unconstitutional establishment of religion. The following year in the famous *Abington School District* v. *Schempp* and *Murray* v. *Curlett* cases, the Court ruled that Bible reading and prayers in school aided and abetted religion and violated the establishment clause of the First Amendment.

Moment of Silence Cases

In 1985 the Supreme Court rendered its decision in *Wallace* v. *Jaffree*. This case was the result of a series of Alabama statutes passed from 1978 to 1982 that called for a moment of silence in the public schools. The first statute simply provided for a "moment of silent meditation," while the subsequent two statutes provided for "a moment of silent meditation and prayer" and "teachers authorized to lead students in vocal prayer," respectively.

The U.S. District Court in Mobile, Alabama, while finding that the last two statutes failed the first part of the *Lemon* test (intent to aid religion), stated that the First Amendment to the U.S. Constitution did not prohibit states from adopting a religion and upheld the statutes. The Eleventh Circuit Court of Appeals reversed the district

court opinion. Alabama did not have the right to establish a state religion, and the statutes failed the first part of the *Lemon* test, said the court.

The U.S. Supreme Court issued a six-to-three opinion affirming the circuit court's decision. The Court spent a considerable amount of time reprimanding the district court for its absurd conclusion that the First Amendment did not prohibit Alabama from establishing a religion. The Court quoted an earlier decision to make its point:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein" (*Bd. of Education* v. *Barnette*, 1943). The State of Alabama, no less than the Congress of the United States, must respect that basic truth. This Court has confirmed and endorsed this elementary proposition of law time and time again.

The primary basis for the Court's rejection of the moment of silence laws was the testimony of the bills' sponsor during the district court's hearing. State Senator Donald Holmes had testified that the primary intent of the bills was to "return prayer to the public schools." Therefore, the Court concluded that the Alabama statutes failed the first part of the *Lemon* test; thus there was no need to examine the other two elements.

However, the *Wallace* v. *Jaffree* case has one interesting aspect. In a concurring opinion, former Justice Lewis Powell noted that both he and Justice O'Connor believed that "some moment-of-silence statutes may be constitutional." Powell footnoted a decision by O'Connor explaining his position:

> Justice O'Connor is correct in stating that moment-of-silence statutes cannot be treated in the same manner as those providing for vocal prayer: "A state-sponsored moment of silence in the public schools is different from state-sponsored vocal prayer or Bible reading. First, a moment of silence is not inherently religious. Silence, unlike prayer or Bible reading, need not be associated with a religious exercise. Sec-

ond, a pupil who participates in a moment of silence need not compromise his or her beliefs. During a moment of silence, a student who objects to prayer is left to his or her own thoughts and is not compelled to listen to the prayers or thoughts of others. For these simple reasons, a moment of silence statute does not instantly fall under the Establishment Clause."

Shortly after the *Wallace* v. *Jaffree* decision was announced in 1985, the State of New Jersey appealed a decision by the New Jersey Supreme Court that struck down the state's moment-of-silence statute. The defendants in that case, the speaker of the state general assembly and the president of the state senate, had gained permission to intervene as defendants when the original named defendants (the state attorney general and two school boards) refused to defend the statute. The Supreme Court heard arguments in the case (*Karcher* v. *May*, 1987). However, during the course of the appeals, the defendants lost their leadership posts in the state legislature. Instead of deciding the issues in the case, the Court ruled that the defendants did not have standing to appeal the case since they had left the official posts they held at the beginning of the trial.

Posting the Ten Commandments

In 1980, the U.S. Supreme Court reversed the Kentucky Supreme Court in *Stone* v. *Graham*, which concerned the posting of the Ten Commandments on the walls of public schools. The Kentucky legislature passed a statute that required the posting of a copy of the Ten Commandments in every public classroom in the state. The cost was paid through private contributions. At the bottom of each Ten Commandment display was the following notation in small print:

> The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States.

Suit was brought alleging that the statute violated both the establishment clause and the free exercise clause of the First Amendment. The state court concluded that the statute's intent and effect were neutral and did not advance nor inhibit religion. The Kentucky Supreme Court affirmed the lower state court decision by an equally divided court.

The U.S. Supreme Court disagreed. It stated that the primary purpose of posting the Ten Commandments was religious in nature and "no legislative recitation of a supposed secular purpose can blind us to that fact." However, the Court did leave room for the Ten Commandments to be used in a purely academic manner:

> This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like. . . . Posting of religious texts on the wall serves no such educational function.

School Clubs and the Equal Access Act

There were several cases decided by lower federal courts in the 1970s that prohibited student groups from using public school facilities for prayer meetings. In two cases, the Supreme Court refused to review circuit court decisions that prohibited students from using school facilities for religious purposes, even though the student groups were not a "formal" school organization. In both cases, the circuit courts ruled that allowing students to use public school buildings for prayer meetings was aiding and abetting religion and, therefore, in violation of the establishment clause (*Brandon* v. *Board of Education of Guilderland Central School District*, 1980; and *Lubbock Civil Liberties Union* v. *Lubbock Independent School District*, 1982).

However, many watchers of the Supreme Court were quick to point to a case that allowed students to use *university* buildings for prayer meetings (*Widmar* v. *Vincent*, 1981). In this case, the Court stated that university campuses were public forums, and it was a violation

of students' First Amendment freedom of speech rights to deny them "equal access" to the university's facilities. (It should be noted that over the past 20 years, the Supreme Court has used "companion" religion and education cases as a means to highlight the difference between the requirements of higher education and public K-12 schools.)

In 1984 the U.S. Congress passed the Equal Access Act as a means of providing the same rights given to college students in *Widmar* to public school students. At the same time that Congress was enacting the Equal Access Act, another voluntary student religious group case was working its way through the federal judiciary. In January 1984 the Third Circuit Court of Appeals ruled against a student religious group in *Bender* v. *Williamsport Area School District*. In this case, a student group called "Petros" (the Rock) wanted to use a classroom for student-initiated prayer and discussion during the high school's 30-minute activity period. While the court recognized the First Amendment rights of the students (citing *Widmar*), it felt the violations of the establishment clause outweighed those rights. The court ruled that if the school board were to allow the students to use the school facilities, it would fail the second and third parts of the *Lemon* test (effect and entanglement). Shortly after this decision was rendered, Congress passed the Equal Access Act; and the students, using the newly enacted statute, appealed the circuit court decision to the Supreme Court.

Rather than ruling on the constitutional issues in *Bender*, the Supreme Court ducked a hot political issue and instead ruled on a purely procedural issue. In March 1986, the Court ruled by a five-to-four majority to vacate the case since the appeal was initiated by only one board member, whereas the original suit was brought against the entire school board and, therefore, the entire board must appeal the case. Thus, on the procedural grounds that a single board member did not have standing to initiate the appeal, the Court avoided settling the constitutional status of voluntary religious activities in public schools, and with it, the constitutionality of the Equal Access Act.

In spite of the high court's refusal to render a clear decision on this issue, the constitutionality of the Equal Access Act remains in question. The reader can be sure that a similar case without procedural flaws will work its way up to the Supreme Court. And when this happens, the Court will have to decide on the constitutional issues. (For a fuller discussion of the issues, see fastback 253 *Voluntary Religious Activities in Public Schools: Policy Guidelines* by Jan C. Robbins.)

Religious Holidays and Holiday Observances

Connecticut had a law that required employers to give employees time off on their chosen Sabbath. After the Connecticut Supreme Court reversed a lower court opinion upholding such a law, the case was appealed to the U.S. Supreme Court. In 1985 the Supreme Court ruled that a state may not pass a law requiring employers to give employees their Sabbath days off. In *Thornton and Connecticut* v. *Caldor*, the Court ruled such laws are a violation of the establishment clause because "The statute has a primary effect that impermissibly advances a particular religious practice."

In *Ansonia Board of Education* v. *Philbrook* (1986), the Supreme Court ruled on a case concerning a school system's reasonable accommodation of a teacher's religious needs. As part of a collective bargaining agreement with the local teacher association, the school district provided three personal leave days that could be used for observance of religious holidays. Teachers also were granted three personal leave days and sick leave, which could not be used for religious observances.

Philbrook claimed that the school district had violated Title VII's prohibition against religious discrimination by failing to reasonably accommodate his religious beliefs, which required him to miss about six days of school each year. The teacher offered several plans to the school board, including using his other three personal leave days or subtracting the cost of a substitute from his per diem pay rather than being granted a leave without pay. The school board rejected the teacher's alternative plans.

The school district won at the district court level. However, the circuit court reversed that decision and ruled in favor of the teacher. The circuit court stated that reasonable accommodation entails both sides proposing solutions to the dilemma. Since the school board did not propose any solutions, it was bound to accept one that was proposed by Philbrook.

Chief Justice Rehnquist, in writing for the Court, reversed the circuit court decision and ruled in favor of the school board. Rehnquist expressed some concern about the insufficient evidence regarding the solutions presented by the teacher and whether there were any counter offers by the board. However, he stated that Title VII's burden on the employer requires only that the employer show that some attempt was made to "reasonably accommodate" the individual's religious beliefs and not to be forced into accepting the individual's proposed alternatives.

However, in an earlier case a federal district court in South Dakota reinstated a teacher who was dismissed when he missed school to attend a religious festival (*Wangsness* v. *Watertown School District*, 1982). The teacher had been denied permission to attend the festival. In spite of this denial, the teacher attended the religious festival; but he did prepare lesson plans for a guidance counselor who substituted for him. The court ruled that there was no significant disruption of the teacher's classes or the school and that the school board failed to reasonably accommodate the teacher's religious beliefs as required by Title VII.

From these and similar cases, it is safe to conclude that there is a duty for school boards to adhere to the stipulations required by Title VII of the 1964 Civil Rights Act. This act requires employers to reasonably accommodate reasonable religious beliefs. The employer must be able to show that it did something to accommodate an individual's religious beliefs, but the employer does not have to accept the individual's proposed alternative accommodations. It should also be pointed out that courts will not protect individuals whose religious beliefs or requests are not "reasonable."

Christmas Pageants and Other Seasonal Observances

Several disputes concerning Christmas and other seasonal observances reached the federal courts during the 1980s. Most of these cases concerned the state's support of religious scenes or music during the Christmas season.

In 1980 the Supreme Court refused to accept an appeal of a case decided by the Eighth Circuit Court of Appeals (*Florey* v. *Sioux Falls School District*, 1980) on whether school-sponsored Christmas pageants were in violation of the establishment clause. In *Florey*, the appeals court had upheld a series of rules that permitted, but regulated, Christmas pageants and other "seasonal" observances. In its decision, the court found that "Government involvement in an activity of unquestionably religious origin does not contravene the Establishment Clause if its 'present purpose and effect' is secular." In making its decision, the court argued:

> Much of the art, literature and music associated with traditional holidays, particularly Christmas, has acquired a significance which is no longer confined to the religious sphere of life. It has become integrated into our national culture and heritage.

The court went on to say:

> School administrators should, of course, be sensitive to the religious beliefs or disbeliefs of their constituents and should attempt to avoid conflict, but they need not and should not sacrifice the quality of the students' education. They need only ensure that the primary effect of the school's policy is secular.

In 1984 the U.S. Supreme Court finally rendered a decision that helped local governments and schools deal with Christmas pageant issues (*Lynch* v. *Donnelly*). The city of Pawtucket, Rhode Island, had erected a Christmas display on a park located in the center of the business district. Since 1971, the Christmas display had included a crèche.

Suit was filed against the city alleging that the city was endorsing religion (and specifically Christianity) by having the crèche as part

of the Christmas display (which also included Santa Claus, a Christmas tree, reindeer, etc.). The federal district court ruled against the city, finding that the crèche violated the establishment clause. An equally divided court of appeals affirmed this ruling.

However, the Supreme Court disagreed in a five-to-four decision. Chief Justice Burger went to great lengths to set a historical perspective on the case.

> No significant segment of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. "It has never been thought either possible or desirable to enforce a regime of total separation (of church and state)."

When examining the "intent" part of the *Lemon* test, the Court found:

> When viewed in the proper context of the Christmas Holiday season, it is apparent that, on this record, there is insufficient evidence to establish that the inclusion of the crèche is a purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message. . . . The crèche in the display depicts the historical origins of this traditional event long recognized as a national holiday.

Similarly, the Court found no significant entanglement between government and religion and no real "effect" that aids and abets religion.

Public school administrators and teachers can glean the following from *Lynch*: It is permissible to hold seasonal religious pageants and events as long as the purpose and effect of such activities is not to foster religion. Rather, the intent and effect of the activities should be secular in nature and be entwined with the school's curriculum in examining historical, cultural, and seasonal issues. However, public educators do have a responsibility not to deliberately offend those whose beliefs or nonbeliefs may differ from the majority.

Prayers During School Functions

The courts seem to be developing some unanimity regarding prayers during such school activities as assemblies and extracurricular events. Prayers at such events violate the establishment clause and will likely be considered unconstitutional. However, prayers at graduation ceremonies have not been decided in a consistent manner. The U.S. Supreme Court has had the opportunity to rule on only one of these cases; however, given the lack of consistency in lower court rulings, sooner or later the high court will be called on to settle the issues.

In 1981 the Supreme Court refused to hear a case from the Ninth Circuit Court of Appeals that dealt with school prayers before school assemblies (*Collins* v. *Chandler Unified School District*). The case arose when a high school student council received permission from the school's principal to recite prayers prior to school assemblies. Students who did not wish to participate in the prayers were sent to a study hall. A mother of two students filed suit alleging that the prayers violated the establishment clause. The court of appeals found that the prayer practice violated every part of the *Lemon* test. The voluntary aspect of the prayers and assemblies were irrelevant considering the unconstitutional aspects of the case.

The constitutionality of religious exercises before athletic events also has reached the federal courts. In 1983 a district court ruled that religious songs could not be sung before football games because the practice failed the *Lemon* test (*Doe* v. *Aldine Independent School District*). In 1987 Judge Ernest Tidwell of the U.S. District Court in Atlanta, Georgia, ruled that prayers held before home football games were unconstitutional because they are a "religious activity" sanctioned by a public school (*Jaeger* v. *Douglas County Public Schools*).

Prayer before graduation ceremonies is more problematical. In 1985 two federal courts gave opposite rulings on this issue. One federal court, using *Lemon* and *Stone* as precedents, ruled such practices unconstitutional while another federal court, using *Marsh* (concerning

use of a paid chaplain to open each session of the Nebraska legislature with prayer) and *Lynch* as precedents, ruled such practices constitutional.

A federal district court in Iowa ruled that prayers, invocations, and benedictions at graduation ceremonies, regardless how short and nondenominational, violated all three parts of the *Lemon* test (*Graham* v. *Central Community School District of Decatur County*, 1985). The judge felt that the *Stone* decision by the Supreme Court in 1980 overruled several previous federal lower court decisions from the 1970s that found such prayers acceptable (*Grossberg* v. *Deusebio*, 1974; and *Wood* v. *Mt. Lebanon Township School District*, 1972). The court also rejected the argument that participants in such exercises were freely exercising their religious rights under the First Amendment:

> The First Amendment right of the people to the free exercise of religion does not give them the right to have government provide them public prayer at government functions and ceremonies, even if the majority would like it. It may well be that the majority of graduating seniors and the majority of the population in the defendant school district would like to have an invocation and benediction as part of the commencement exercises. However, the enforcement of constitutional rights is not subject to the pleasure of the majority.

However, in that same year a federal district court in Michigan ruled just the opposite. *Stein* v. *Plainwell Community Schools* is actually two cases from Michigan that were consolidated for judicial purposes. In one case, students volunteered to say the invocation and did not receive any supervision from the school staff regarding the content of their presentations. In the other case, where there had been a history of graduating seniors organizing their own graduation ceremony, the seniors invited a local minister to present the invocation. The court considered the Supreme Court decision in *Marsh* and reached the following conclusion: The history and tradition of holding prayers at graduation ceremonies is not substantially different from the opening prayers in the Nebraska Legislature. Therefore, the *Lemon*

intent and effect tests were satisfied. And since the students initiated the prayers, there was no excessive governmental entanglement with religion. Consequently, the Michigan federal court ruled that prayers, invocations, and benedictions at graduation ceremonies are allowable under the First Amendment.

It would appear, then, that until the Supreme Court makes a definitive decision, policy guidelines on prayers, invocations, and benedictions for public school graduation ceremonies will depend on which federal court jurisdiction the school is in.

Aid to Parochial Schools

During the 1970s and early 1980s, parochial schools in many of the Eastern and Northern states were in dire financial condition. Many officials in these states realized that if the parochial schools ceased functioning, all the pupils they served would have to go to the public schools. And since parents of these pupils already payed taxes to support the public schools, there would not be one cent of additional revenue. Obviously, such a situation would place an extreme financial burden on states with large populations of parochial school students. In order to prevent this situation from occurring, many states decided to provide some minimal aid to parochial schools.

The Supreme Court decided the first case involving aid to parochial schools by a five-to-four vote in 1947, dealing with free school transportation for non-public school students (*Everson* v. *Board of Education*). At that time, many Supreme Court observers felt that such a closely decided case would almost certainly be overturned in a few years. However, more than 40 years later the *Everson* decision remains a cornerstone of religion and education cases. This decision is important for two reasons. First, it allowed for the reimbursement of public transportation costs to parochial school parents (thus beginning the era of aid to parochial schools). Second, for the first time since the ratification of the First Amendment, the Supreme Court stated exactly what the establishment clause means:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs nor disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."

Two decades after the Supreme Court allowed parochial school parents to be reimbursed for transportation expenses, the court also decided to permit public school systems to "loan" secular textbooks to parochial schools (*Board of Education of Central School District No. 1* v. *Allen*, 1968). In 1971 the Court decided *Lemon* v. *Kurtzman*, which established the "tripartite" or *Lemon* test. This case also found that teacher salary supplements and purchases of secular educational services and instructional materials violated the First Amendment.

In 1975 the high court was asked to decide if "auxiliary services" could be offered to parochial schools. *Meek* v. *Pittenger* addressed whether Pennsylvania could provide "counseling, testing and psychological services, speech and hearing therapy, teaching and related services for exceptional children, for remedial students, and for the educationally disadvantaged." The Court upheld the "loan" of textbooks but struck down all the other services that the state was attempting to provide.

Two years later, in 1977, the Supreme Court took on a case that, on its face, appeared to be much like *Meek* v. *Pittenger*. In *Wolman*

v. *Walter*, the Court was asked if Ohio could provide the following services to parochial schools: textbooks, standardized testing and scoring, diagnostic services, therapeutic and remedial services, instructional materials, and field trips. The Court ruled that providing textbooks, standardized testing and scoring, diagnostic services, and therapeutic and remedial services was permissible; but providing instructional materials and field trip services was a violation of the establishment clause.

In 1980 the Supreme Court decided a New York case involving a state statute to reimburse all private schools (both parochial and secular) for performing various testing services mandated by the state (*P.E.A.R.L.* v. *Regan, Comptroller of New York*). These services included giving, grading, and reporting the results of state-prepared tests. The Supreme Court ruled in favor of the New York statute and held that paying nonpublic schools for performing state-mandated services is constitutional.

Shared Time Programs and Chapter I Services

In 1985 the Supreme Court decided two cases involving special services performed on the premises of parochial schools rather than on public school campuses (*Aguilar* v. *Felton*, and *Grand Rapids School District* v. *Ball*). Given previous Supreme Court decisions that allowed special services for parochial school students, many school districts found it easier to use parochial school teachers or to send public school teachers into the parochial schools than to transport parochial school students to the public schools.

The New York case concerned Title I (Chapter I) services supplied to eligible parochial school students by public school teachers in the parochial schools. These services included remedial classes in reading and mathematics, English as a second language, and guidance and counseling services. The challenged program had been approved previously by a U.S. District Court in New York (*P.E.A.R.L.* v. *Harris*, 1980).

The Supreme Court, in a five-to-four decision, ruled that such practices violated the establishment clause. In its decision the Court said that the New York programs violated the excessive entanglement part of the *Lemon* test. The state aid and its necessary supervisory processes entangled the public school personnel too closely with the parochial school systems: "In short, the scope and duration of New York City's Title I program would require a permanent and pervasive state presence in the sectarian schools receiving aid. This pervasive monitoring by public authorities in the sectarian schools infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement."

The Grand Rapids case involved that city's shared time and community education programs. The shared time programs involved public school teachers who taught such courses as elementary art, music, physical education, math, and reading in parochial schools. The community education program was an after-school program where courses in foreign languages, arts and crafts, home economics, gymnastics, drama, chess, nature appreciation, and journalism were taught by public school teachers in the parochial schools. Many of the public schools also offered these same community programs. Courses at both the public and parochial schools were available to the public.

Writing for the Court, Justice Brennan listed three reasons why the two programs failed the effects part of the *Lemon* test:

> First, the teachers participating in the programs may become involved in intentionally or inadvertently inculcating particular religious tenets or beliefs. Second, the programs may provide a crucial symbolic link between government and religion, thereby enlisting – at least in the eyes of impressionable youngsters – the powers of government to the support of the religious denomination operating the school. Third, the programs may have the effect of directly promoting religion by impermissibly providing a subsidy to the primary religious mission of the institutions affected.

The court did suggest that a shared time program where the courses would be offered in the public schools rather than in the parochial schools might be constitutional.

The conclusions that can be drawn from these two companion cases are clear. The courts will not allow public school teachers to offer secular services on the property of parochial schools. While it may be easier to move one teacher to a parochial school than to move 25 students to a public school, the Constitution demands that the students leave the religious setting in order to avail themselves of such services.

Tax Deductions for Education Expenses

In 1973 the Supreme Court ruled that income tax credits and tuition rebates to parents of parochial school students violated the establishment clause (*P.E.A.R.L.* v. *Nyquist*). The Court held that the effect of the legislation was to aid and abet religion. Since the money was going directly to the parents of parochial school students, the funds were, in effect, advancing the cause of religion.

However, in 1983 the Supreme Court allowed such tax credits in *Mueller* v. *Allen*. This case concerned a Minnesota law that allows parents to deduct certain education expenses from their gross income on their state income taxes. While this program appears to possess many of the same elements involved in the *Nyquist* case, there is one important distinction – the Minnesota law allows *all* parents to take the tax deduction, regardless of whether their children attend public, private, or parochial schools. The deduction is limited to expenses incurred for "tuition, textbooks and transportation." The deduction is further limited to $500 for students in kindergarten through sixth grade and $700 for students in seventh to twelfth grade.

The Court made a special effort to draw a distinction between the *Mueller* and *Nyquist* cases:

> In this respect, as well as others, this case is vitally different from the scheme struck down in "Nyquist." There, public assistance amount-

ing to tuition grants, was provided only to parents of children in *non-public* schools. [Court's emphasis]

The Court found no real threat of excessive governmental entanglement with religion because the funds were being channeled "through individual parents" rather than being provided directly to the parochial schools. Furthermore, the Court also found that the purpose of the tax credits, to defray the costs of education, satisfied the intent test because it had a reasonable secular purpose.

However, Justice Marshall wrote a compelling dissenting opinion that pointed out an important factor that may surface if litigation arises in other states:

> Contrary to the majority's suggestion . . . the bulk of the tax benefits afforded by the Minnesota scheme are enjoyed by parents of parochial school children not because parents of public school children fail to claim deductions to which they are entitled, but because the latter are simply *unable* to claim the largest tax deduction that Minnesota authorizes . . . tuition. Of the total number of taxpayers who are eligible for the tuition deduction, approximately 96% send their children to religious schools. [Court's emphasis]

The Supreme Court decisions in the 1980s that culminated in *Mueller* show a definite trend in allowing more services to be provided to parochial school students and their parents. The only restriction seems to be that the services cannot be performed by public school personnel on parochial school property.

Religion in the Curriculum

The federal courts have reviewed everything from compulsory attendance to sex education programs in the 1980s. But many of these cases have precedents in Supreme Court decisions prior to 1980.

One significant early decision, occurring in 1943, was *West Virginia State Board of Education* v. *Barnette*. Despite the fact that the country was caught up in the patriotic fervor of World War II, the nation's highest court upheld the right of school children to be exempt from saying the Pledge of Allegiance. The Court found that the religious rights of the children supersede the state's powers to encourage patriotism.

Compulsory Attendance

The Supreme Court first considered religious objections to compulsory attendance in *Wisconsin* v. *Yoder* (1972). Wisconsin attempted to force the Amish to comply with the state's compulsory education law. Although the Amish religion has held a theological objection to formal education for almost 300 years, Amish children did attend school through the eighth grade. After completing the eighth grade, the children were given vocational training by the Amish community. In the hearings, the State of Wisconsin was unable to show a single instance where an Amish child had, in any way, become dependent on the state for support. Nevertheless, the state was determined to

compel the school attendance of these children. The Supreme Court ruled that since the Amish had complied with the state's compulsory education law through the eighth grade, they had lost their right to object to such school attendance. However, the high court did grant the Amish an exclusion to compulsory education after the eighth grade, based on the long-held opposition to compulsory education in the Amish religion.

In 1983 the U.S. Supreme Court refused to hear an appeal from the Fourth Circuit Court of Appeals concerning a parent's right to educate his children at home. The case, *Duro* v. *North Carolina*, involved a member of the Pentecostal Church who refused to send his five school-age children to the public schools because the schools taught about "the unisex movement where you can't tell the difference between the boys and girls and the promotion of secular humanism." Duro's wife, who was not trained as a teacher, taught the children at home using a program developed by the Alpha Omega Christian Church. (It should be noted here that there is great variation among states as to legislation and regulations concerning home schooling.)

There were two important differences between this case and *Yoder*. First, there was no evidence of a formal theological opposition to education. The Fourth Circuit Court of Appeals, while acknowledging that Duro's religious beliefs appeared to be genuine, found that other members of the Pentecostal Church sent their children to the public schools. Second, Duro testified that even though his children would not have the benefits of a public education, he expected them to "be fully integrated and live normally in the modern world upon reaching the age of 18." The circuit court ruled in favor of North Carolina's compulsory attendance law, citing these two primary differences between this case and *Yoder*. Referring to the second difference, the court said:

> Duro has not demonstrated that home instruction will prepare his children to be self-sufficient participants in our modern society or enable them to participate intelligently in our political system, which, as the

Supeme Court stated, is a compelling interest of the state. . . . We find, therefore, that this case is factually distinguishable from *Yoder*. Despite Duro's sincere religious belief, we hold that the welfare of the children is paramount and that their future well-being mandates attendance at a public or nonpublic school.

Creationism and Evolution

The dispute over teaching creationism and evolution in the public schools has a long and colorful history. The issue leapt into public view in 1927 with *Scopes* v. *State of Tennessee*, in which William Jennings Bryan won a major victory prohibiting the teaching of evolution in Tennessee. Even though Clarence Darrow may have lost the case in 1927, the last two decades of litigation have made him the ultimate winner.

The Supreme Court examined an almost identical case in 1968. *Epperson* v. *Arkansas* concerned a state's right to prohibit the teaching of evolution. The Court concluded that the only reason for prohibiting the teaching of evolution was "because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man." Consequently, the high court struck down the law as violating the First Amendment.

The State of Arkansas brought the issue of creationism versus evolution to federal court again in 1982. In *McLean* v. *Arkansas Board of Education*, a federal district court ruled that Arkansas Act 590 (the Balanced Treatment for Creation-Science and Evolution-Science Act) violated the establishment clause. After weeks of testimony from both scientists and theologians, the court concluded that there is no scientific basis whatsoever for the theory of creationism and that teaching creationism is actually teaching religion. Therefore, the court ruled that teaching "creation science" violates the second part of the *Lemon* test.

During the summer of 1987, the Supreme Court rendered its decision in the Louisiana "creationism" case, *Aguillard* v. *Edwards*. The

details of this case are almost identical to those in *McLean*. Louisiana passed the "Balanced Treatment for Creation-Science and Evolution-Science in Public Instruction Act," which required that wherever evolution is taught, creation science also must be taught. The case has an interesting judicial history, but what is germane to this discussion is that the Court found that the purpose of the Act was to discredit evolution and to advance religion. In a seven-to-two decision, the Court ruled the act unconstitutional because it violated the first part of the *Lemon* test and, therefore, the establishment clause of the First Amendment.

Using the Bible in the School Curriculum

There is a common misconception among many public school educators that the Bible cannot be used at all in the school curriculum. While the Supreme Court prohibited the use of the Bible for religious purposes in the 1963 *Schempp* case, the Court did allow the Bible to be used for such subjects as literature, history, or a study *about* religion.

The distinction between teaching religion and studying *about* religion is important. In 1982 the Fifth Circuit Court of Appeals reversed another of U.S. District Court Judge Hand's religion decisions (this is the same judge who ruled that the First Amendment did not prohibit Alabama from establishing a state religion in *Wallace* v. *Jaffree*, 1985). In *Hall* v. *Board of School Commissioners of Conecuh City* (1982), the circuit court ruled that a high school Bible in Literature course violated the First Amendment because its intent, effect, and practice was to teach religion rather than study *about* religion. The textbook for the course was *The Bible for Youthful Patriots*, which the court found to be fundamentalist and evangelical in nature and tended to promote Protestantism over all other types of religion. The court ruled that for the course to meet constitutional guidelines, it must be taught in an objective fashion that complied with a secular purpose. (For further information on this topic, see fastback 224 *Teaching About Religion in the Public Schools* by Charles R. Kniker.)

Teachers' Rights to Refuse to Teach Objectionable Material

The Seventh Circuit Court of Appeals decided an interesting case in 1979 concerning the right of teachers not to teach material that conflicts with their religious views. In *Palmer* v. *Board of Education of the City of Chicago*, an elementary public school teacher, who was a member of the Jehovah's Witness church, refused to teach about or participate in "the Pledge of Allegiance, the singing of patriotic songs, and the celebration of certain national holidays" because they violated her religious beliefs. The school went to great lengths to accommodate her views but ultimately did not renew her contract.

The court found that teachers do not have a right to deprive students of a quality education simply because they have religious objections to certain content. Also, the court felt that the nonrenewal of her contract did not infringe on her religious rights.

Textbooks and Secular Humanism

Of all of the areas involving religion and education, secular humanism seems to be receiving the most media attention. The charge of secular humanism is based on the allegation that textbooks that do not mention God or religion are promoting non-religion as a religion. References were made to this issue in 1963 in Justice Potter Stewart's dissenting opinion to the *Schempp* case. Stewart alleged that the majority was advancing non-religion as the official state religion (Stewart cast the only dissenting vote in that case). While the term "secular humanism" was not used in 1963, the concept was present.

In the 1980s, there have been many legal challenges using the "secular humanism" issue; but none of them have been decided by the Supreme Court. In 1982 the Supreme Court refused to hear a case that challenged a New Jersey state-mandated family life curriculum, thus sustaining the decision of the Supreme Court of New Jersey (*Smith* v. *Ricci*). In response to a directive by the New Jersey Senate, the State Board of Education passed a regulation requiring every school

district in the state to have a Family Life Education program in effect by 1 September 1981. The policy allowed parents to have their children excluded from parts of the program that they found objectionable. Such objections had to be in writing, and parents could not object to the entire program.

Smith filed suit against the State Board of Education, alleging that the regulation violated her and her children's First Amendment right of free exercise as well as the establishment clause. Parents represented by Smith contended that the home teaching of morality would be negated by the family life program and that they had religious rights to teach about matters of human sexuality. The New Jersey Supreme Court's response was: "Where there is not compulsion to participate in this program, there can be no infringement upon appellants' rights freely to exercise their religion."

Another of the parents' objections to the program was that it established the religion of secular humanism. The court dismissed this allegation by asserting that the program was neutral in its approach to the issues:

> There is absolutely nothing in the regulation or in the curriculum guidelines that gives even the slightest indication that the program favors a "secular" view of its subject matter over a "religious" one. The program is, as it must be, neither antagonistic toward religion nor supportive of non-religion.

The court also pointed out that if Smith's religious values were allowed to control what other children are taught, it would be an impermissible establishment of religion:

> First, the regulation, because of the excusal clause, does not inhibit the free exercise of religion. Second, to permit the appellants to control what others may study because the subject may be offensive to appellants' religious or moral scruples would violate the Establishment Clause.

In 1985 the Supreme Court refused to hear an appeal from the Ninth Circuit Court of Appeals, which ruled in favor of a school district

that refused to remove a book from the sophomore English curriculum (*Grove* v. *Mead School District No. 354*). Grove filed suit on behalf of her daughter, alleging that the book, *The Learning Tree* by Gordon Parks, "has the primary effect of inhibiting their religion, fundamentalist Christianity, and advancing the religion of secular humanism." The court took special note that Grove's daughter had been given an alternative assignment and permission to absent herself from the classroom when discussions of the book were to take place. However, the student chose to remain in the classroom during the discussions of the book. The court concluded that because there was no coercion involved, there were no violations of First Amendment rights. The court also said, "Comment on religion is a very minor portion of the book. Its primary effect is secular."

During the summer of 1987, two other federal circuit courts of appeals rendered decisions concerning textbooks and secular humanism. The cases came from Tennessee (*Mozert* v. *Hawkins County Board of Education*) and from Alabama (*Smith* v. *Board of School Commissioners of Mobile County*).

The *Smith* case was originally decided by federal district court Judge Hand. The lawsuit alleged that some textbooks on the Alabama State Approved Textbook List violated the establishment clause of the First Amendment because they promoted the religion of "secular humanism." Judge Hand agreed and ordered Alabama to stop using 44 history, social studies, and home economics books. The Eleventh Circuit Court of Appeals overruled Hand's decision and took him to task for misapplying constitutional law.

> The home economics, social studies, and history textbooks at issue in this case do not violate the establishment clause of the First Amendment. The district court's conclusions to the contrary reflect a misconception of the relationship between church and state mandated by the establishment clause. . . . The district court's opinion in effect turns the establishment clause requirement of "lofty neutrality" on the part of the public schools into an affirmative obligation to speak about re-

ligion. Such a result clearly is inconsistent with the requirements of the establishment clause.

One interesting aspect of this case was the circuit court's subtle request for guidance from the Supreme Court: "The Supreme Court has never established a comprehensive test for determining the 'delicate question' of what constitutes a religious belief for purposes of the First Amendment."

Normally, judicial watchers have not taken Judge Hand's religion decisions very seriously because he has been overturned so often by the circuit court. However, the *Mozert* case in Tennessee was being adjudicated at the same time as the *Smith* case; and the decision by the federal district court in east Tennessee lent some legitimacy to Hand's decision.

In many ways, the case history of *Mozert* is similar to that of *Smith*. A parent of three children in the Hawkins County Public Schools filed suit alleging that the content of some of the Holt basic reading series was "secular humanism," which violated her free exercise rights and the establishment clause. The U.S. District Court originally dismissed the suit without a trial but was told by the Sixth Circuit Court that it had to hear the case. On hearing the case, District Court Judge Hull ruled that the books did, in fact, contain ideas contrary to the parents' religious belief and thus violated their First Amendment rights. The judge ordered the school system to excuse the children from reading material that they find objectionable.

The school district appealed the case to the Sixth Circuit Court of Appeals, which reversed the district court's decision. The circuit court summarized the issue as follows:

> The first question to be decided is whether a government requirement that a person be exposed to ideas he or she finds objectionable on religious grounds constitutes a burden on the free exercise of that person's religion as forbidden by the First Amendment.

However, the court found that even if there were a much more balanced presentation of information, it would still not satisfy the plaintiffs: "It is clear that to the plaintiffs there is but one acceptable view – the Biblical view, as they interpret the Bible." The court also addressed the issue of coercion (as did the court in the *Grove* case). The court found that "What is absent from this case is the critical element of compulsion to affirm or deny a religious belief or to engage or refrain from engaging in a practice forbidden or required in the exercise of a plaintiff's religion."

The court held that the Holt reading series was neutral in its approach to religious issues and that the school system could continue to use the series. The court also held that requiring students to use the series is not a violation of their First Amendment rights:

> What we do hold is that the requirement that public school students study a basal reader series chosen by the school authorites does not create an unconstitutional burden under the Free Exercise Clause when the students are not required to affirm or deny a belief or engage or refrain from engaging in a practice prohibited or required by their religion.

From the above cases, several conclusions can be drawn about religion and the curriculum. One is that litigation about "secular humanism" will continue until the U.S. Supreme Court accepts such a case and settles the issue. In the meantime, the circuit courts seem to be quite consistent in their rulings. Books that do not contain religious content are not promoting the religion called "secular humanism," and school systems have the right to use such books. In early 1988, the U.S. Supreme Court refused to hear appeals from the *Hawkins* and *Mozert* cases, thus sustaining both circuit court decisions.

The *Aguillard* decision by the U.S. Supreme Court should close down litigation about the "balanced treatment" acts. Such acts are unconstitutional. Creationism is not a scientific theory – it is religion. Teaching creationism in public schools violates the establishment clause of the First Amendment.

The courts also are surprisingly consistent in the sex education and family life curriculum cases. As long as the schools allow for some type of exclusion from offensive portions of the programs, the courts have ruled that there is no violation of rights. In fact, the courts have ruled that if we allow one parent's religious views to control the curriculum, the state would be guilty of establishing that person's religion as the state religion.

The courts are also relatively consistent regarding cases involving teachers' objections to teaching parts of the school curriculum. Again, the courts are not going to allow one individual's religious beliefs to control the school's curriculum.

Conclusion

Religion and education are likely to engender continuing litigation. In addition, two recent Supreme Court retirements may change judicial attitudes and affect the way these cases are decided in the future. In one retirement, Justice Rehnquist replaced former Chief Justice Burger as Chief Justice. The other retirement was that of Justice Lewis Powell – an important swing vote on the court. Powell's replacement, Judge Anthony Kennedy, may change the delicate balance in many of these important decisions.

Also, it is important to note that on several occasions Justice O'Connor pointed out that the *Lemon* test is inappropriate for many religion and education decisions. In several cases, O'Connor either wrote or joined in concurring opinions that found that the pure application of the *Lemon* test does not meet all the various situations that the cases address. In the future, Justice O'Connor may become an important figure in shaping the high court's opinions in this area. Perhaps the future will present a new "test" or "standard" for religion and education cases.

Finally, there is the ultimate irony of conservatism. President Reagan has attempted to moderate the liberal influence of the Supreme Court and has made four significant appointments (Rehnquist to Chief Justice and Justices O'Connor, Scalia, and Kennedy). None of these appointments can be characterized as liberal or libertarian. All of these justices are conservative thinkers. But one of the ironies of conser-

vatism is that there is a great reluctance to overturn the high court's previous decisions. Even though many of the previous cases were rendered by a more liberal Supreme Court, it would be out of character for the more conservative justices to overturn these decisions without well-justified judicial reasons. Conservative courts just do not overturn precedents as quickly as do liberal courts.

Regardless of the makeup of the Supreme Court, there is one thing that will continue without a doubt: The First Amendment and its establishment and free exercise clauses will continue to promulgate more and more litigation.

List of Cases

Abington School District v. *Schempp*, *Murray* v. *Curlett*, 374 U.S. 203 (1963).

Aguilar v. *Felton*, 105 S.Ct. 3232 (1985).

Aguillard v. *Edwards*, 107 S.Ct. 2573 (1987).

Ansonia Board of Education v. *Philbrook*, 107 S.Ct. 367 (1986).

Bender v. *Williamsport Area School District*, 106 S.Ct. 1326 (1985).

Board of Education of Central School District No. 1 v. *Allen*, 392 U.S. 263 (1968).

Brandon v. *Board of Education of Guilderland Central School District*, 635 F.2d 971 (2nd Cir. 1980); *cert. denied*, 454 U.S. 1123 (1981).

Collins v. *Chandler Unified School District*, 644 F.2d 759, (9th Cir. 1981); *cert. denied*, 454 U.S. 863 (1981).

Doe v. *Aldine Independent School District*, 563 F.Supp. 883 (S.D. Tex. 1983).

Duro v. *North Carolina*, 712 F.2d 96 (4th Cir. 1983); *cert. denied*, 465 U.S. 1006 (1983).

Engel v. *Vitale*, 370 U.S. 421 (1962).

Epperson v. *Arkansas*, 393 U.S. 97 (1968).

Everson v. *Board of Education*, 330 U.S. 1 (1947).

Florey v. *Sioux Falls School District*, 619 F.2d 1311 (8th Cir. 1980); *cert. denied*, 449 U.S. 987 (1980).

Graham v. *Central Community School District of Decatur County*, 608 F.Supp. 531 (D. Iowa 1985).

Grand Rapids School District v. *Ball*, 105 S.Ct. 3216 (1985).

Grossberg v. *Deusebio*, 380 F.Supp. 285 (E.D. Va. 1974).

Grove v. *Mead School District No. 354*, 753 F.2d 1528 (9th Cir. 1985); *cert. denied*, 106 S.Ct. 85 (1985).

Hall v. *Board of School Commissioners of Conecuh City*, 656 F.2d 999 (5th Cir. 1982); *attorneys' fees* 707 F.2d 464 (1983).
Jaeger v. *Douglas County Public Schools*, unpublished U.S. Dist. Ct. opinion, Atlanta, Ga., case #C86-2037A (1987).
Karcher v. *May*, 56 U.S.L.W. 4022 (1987).
Lemon v. *Kurtzman*, 403 U.S. 602 (1971).
Lubbock Civil Liberties Union v. *Lubbock Independent School District*, 669 F.2d 1038 (5th Cir. 1982); *cert. denied*, 459 U.S. 1155 (1983).
Lynch v. *Donnelly*, 104 S.Ct. 1355 (1984).
Marsh v. *Chambers*, 463 U.S. 783 (1983).
McLean v. *Arkansas Board of Education*, 529 F.Supp. 1255 (E.D. Ark. 1982).
Meek v. *Pittenger*, 421 U.S. 349 (1975).
Mozert v. *Hawkins County Board of Education*, 827 F.2d 1058 (6th Cir. 1987).
Mueller v. *Allen*, 463 U.S. 388 (1983).
P.E.A.R.L. v. *Harris*, 489 F.Supp. 1248 (1980).
P.E.A.R.L. v. *Nyquist*, 413 U.S. 756 (1973).
P.E.A.R.L. v. *Regan, Comptroller of New York*, 444 U.S. 646 (1980).
Palmer v. *Board of Education of the City of Chicago*, 603 F.2d 1271 (7th Cir. 1979); *cert. denied*, 444 U.S. 1026 (1980).
Scopes v. *State of Tennessee*, 289 S.W. 363 (1927).
Smith v. *Board of School Commissioners of Mobile County*, 827 F.2d 684 (11th Cir. 1987).
Smith v. *Ricci*, 446 A.2d 501, 1982; *cert. denied*, 459 U.S. 942 (1982).
Smith v. *Smith*, 423 U.S. 1073 (1976).
Stein v. *Plainwell Community Schools*, 610 F.Supp. 43 (W.D. Mich. 1985).
Stone v. *Graham*, 449 U.S. 39 (1980).
Thornton and Connecticut v. *Caldor*, 105 S.Ct. 2914 (1985).
Wallace v. *Jaffree*, 472 U.S. 38 (1985).
Wangsness v. *Watertown School District #14*, 541 F.Supp. 332, (1982).
West Virginia State Board of Education v. *Barnette*, 319 U.S. 624 (1943).
Widmar v. *Vincent*, 454 U.S. 263 (1981).
Wisconsin v. *Yoder*, 406 U.S. 205 (1972).
Wolman v. *Walter*, 433 U.S. 229 (1977).
Wood v. *Mt. Lebanon Township School District*, 342 F.Supp. 1293 (W.D. Pa. 1972).

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